

FILED

13. HEARING CLERK:

Docket No. FIFRA-09-2009-0013

Respondents.

ANSWER: Paragraph 1 states a legal conclusion to which no response is required. To the extent that this paragraph alleges any facts, those facts are denied.

2. *Complainant is the Associate Director for Agriculture of the Communities and Ecosystems Division, United States Environmental Protection Agency ("EPA"), Region IX. The Administrator of EPA delegated to the Regional Administrator of Region IX the authority to bring this action under FIFRA by EPA Delegation Order Number 5-14, dated May 11, 1994. The Regional Administrator of Region IX further delegated the authority to bring this action under FIFRA to the Associate Director for Agriculture of the Communities and Ecosystems Division by EPA Regional Order Number 1255.08 CHGI dated June 9, 2005.*

ANSWER: Bug Bam Products, LLC lacks sufficient knowledge to admit or deny the facts in Paragraph 2, and therefore denies the facts in Paragraph 2.

3. *Respondents are Bug Bam Products, LLC ("Bug Bam") and Flash Sales, Inc. ("Flash Sales").*

ANSWER: Bug Bam Products, LLC admits the allegation of Paragraph 3.

GENERAL ALLEGATIONS

1. *Bug Bam, a California corporation, is a "person" as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.*

ANSWER: Bug Bam Products, LLC is a California Sole Member LLC. Bug Bam Products, LLC admits that it is a "person" as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), subject to the statute and implementing regulations thereunder.

2. *Flash Sales, a Florida corporation, is a "person" as that term is defined by Section 2(s) of FIFRA, 7 U.S.C. § 136(s), and is subject to FIFRA and the implementing regulations promulgated thereunder.*

ANSWER: Paragraph 2 states a legal conclusion to which no response is required. Bug Bam Products, LLC notes that it does not represent or speak for Flash Sales, Inc.

3. *Bug Bam has an office located at 414 2nd Street, Suite 241, Hermosa Beach, California 90254-46.*

ANSWER: Bug Bam Products, LLC admits the allegation of Paragraph 3.

4. *Flash Sales has an office located at 4401 NW 167th Street, Miami, Florida 33055.*

ANSWER: Paragraph 4 states a conclusion of fact for which Bug Bam lacks sufficient knowledge to admit or deny and therefore denies the allegation of Paragraph 4. Bug Bam Products, LLC notes that it does not represent or speak for Flash Sales, Inc.

5. *Respondents collectively distribute or sell insect repellant products.*

ANSWER: Bug Bam Products, LLC denies the allegations of Paragraph 5 as they pertain to Bug Bam.

6. *The products distributed or sold by Respondents are "Bug Bam Insect Repelling Wristband," "Bug Bam for Kids Insect Repelling Wristband," and "Bug Bam Insect Repelling Grid" (the "Bug Bam Products").*

ANSWER: Bug Bam Products, LLC admits that the product names are accurate and denies the remainder of this paragraph.

7. *"Bug Bam Insect Repelling Wristband," "Bug Bam for Kids Insect Repelling Wristband," and "Bug Bam Insect Repelling Grid" (the "Bug Bam Products") each claim to repel mosquitoes.*

ANSWER: Bug Bam Products, LLC admits the allegation of Paragraph 7.

8. *Mosquitoes are "pests" as that term is defined in Section 2(t) of FIFRA, 7 U.S.C. § 136(t).*

ANSWER: Paragraph 8 states a legal conclusion to which no response is required.

9. *A "pesticide" means "any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest." 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3(s).*

ANSWER: Paragraph 9 states a legal conclusion to which no response is required.

10. *"Bug Bam Insect Repelling Wristband," "Bug Bam for Kids Insect Repelling Wristband" and "Bug Bam Insect Repelling Grid" are "pesticides" as defined by 7 U.S.C. § 136(u) and 40 C.F.R. § 152.3(s) in that they are substances or mixtures of substances intended for preventing, destroying, repelling or mitigating "pests."*

ANSWER: Bug Bam Products, LLC admits the allegation of Paragraph 10.

11. *At all times relevant to this action "Bug Bam Insect Repelling Wristband," "Bug Bam for Kids Insect Repelling Wristband" and "Bug Bam Insect Repelling Grid" were not registered with EPA.*

ANSWER: Bug Bam Products, LLC admits that at all times relevant to the Complaint "Bug Bam Insect Repelling Wristband," "Bug Bam for Kids Insect Repelling Wristband" and "Bug Bam Insect Repelling Grid" were not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a). However, Bug Bam Products, LLC denies that registration was required.

12. *40 CFR § 152.25(1) exempts products containing certain active and inert ingredients if all of the following conditions of exemption are met: each product (1) must contain active ingredients listed under 40 C.F.R. § 152.25(f)(1); (2) must contain inert ingredients in the most current List 4A or listed under 40 C.F.R. § 180.950; (3) must bear a label identifying the name and percentage (by weight) of each active ingredient and must name each inert ingredient; (4) must not bear claims either to control or mitigate microorganisms that pose a threat to human health or claims to control insects or rodents carrying specific diseases; (5) and must not include false and misleading statements.*

ANSWER: Paragraph 12 states a legal conclusion to which no response is required.

13. *EPA maintains a list of approved inerts for 40 C.F.R. § 152.25(f) exemption purposes at 40 C.F.R. § 180.950 and www.epa.gov/opprd001/inerts/section25b_inerts.pdf.*

ANSWER: Paragraph 13 states a legal conclusion to which no response is required.

14. *On or about February 25, 2009, the packaging for "Bug Bam for Kids Insect Repelling Wristband" and "Bug Bam Insect Repelling Grid" listed as the active ingredients "pure essential oils including citronella," and did not individually list each active ingredient.*

ANSWER: Bug Bam Products, LLC denies the allegations of Paragraph 14.

15. *On or about February 25, 2009, the Bug Bam Products used a red colorant which was not listed on the package and is not "red cabbage color, expressed from edible red cabbage heads via a pressing process using only acidified water."*

ANSWER: Bug Bam Products, LLC denies the allegations of Paragraph 16.

16. *On or about February 25, 2009, the packaging for "Bug Bam for Kids Insect Repelling Wristband" and "Bug Bam Insect Repelling Grid" listed thermoplastic elastomers, or TPE, as an inert ingredient.*

ANSWER: Bug Bam Products, LLC denies the allegations of Paragraph 16.

17. *The red colorant and TPE used by Respondents in the Bug Bam Products identified in Paragraphs 16 and 17 are not listed on the most current List 4A or under 40 C.F.R. § 180.950.*

ANSWER: Bug Bam Products, LLC denies the allegations of Paragraph 17.

18. *On or about February 25, 2009, Bug Bam claimed that the Bug Bam Products protect users from specific diseases carried by mosquitoes.*

ANSWER: Bug Bam Products, LLC denies the allegations of Paragraph 18.

19. *On or about February 25, 2009, Bug Bam claimed that the Bug Bam Products were "comprised of EPA approved ingredients," contained "EPA/FDA GRAS [Generally Recognized as Safe] approved ingredients," and that the products were scientifically proven to be an effective mosquito repellent.*

ANSWER: Bug Bam Products, LLC denies the allegations of Paragraph 19.

20. *On or about February 25, 2009, for the reasons set forth in Paragraphs 14-19, "Bug Bam Insect Repelling Wristband," "Bug Bam for Kids Insect Repelling Wristband," and "Bug Bam Insect Repelling Grid" did not meet the requirements to be classified as minimum risk pesticides as defined by 40 C.F.R. § 152.25(f).*

ANSWER: Bug Bam Products, LLC denies the allegations of Paragraph 20.

21. *To "distribute or sell" means to "distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receiving and (having so received) deliver or offer to deliver." 7 U.S.C. § 136(gg).*

ANSWER: Paragraph 21 states a legal conclusion to which no response is required.

22. *Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), makes it unlawful for any person to distribute or sell to any person any unregistered pesticide.*

ANSWER: Paragraph 22 states a legal conclusion to which no response is required. Bug Bam Products, LLC further notes that this paragraph is an incomplete statement of the law in that Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A), allows the sale of a pesticide not registered under Section 3 of FIFRA, 7 U.S.C. § 136(a), to the extent that such distribution or sale has otherwise been authorized by the Administrator under that Chapter.

ALLEGED VIOLATIONS

Sale or Distribution of Unregistered Pesticides, 7 U.S.C. § 136j(a)(1)(A)

COUNT 1

23. *Paragraphs 1 through 22 are realleged and incorporated herein by reference.*

ANSWER: Answers to Paragraphs 1 through 22 are hereby incorporated by reference as if the same were set forth herein in full.

24. *On or about February 25, 2009, an employee of EPA identified as Frank Carpenter, accessed the website www.bugbam.com where he purchased the product "Bug Bam Insect Repelling Wristband."*

ANSWER: Bug Bam Products, LLC lacks sufficient knowledge of the allegations in Paragraph 24 and therefore denies those allegations.

25. *The website bugbam.com was registered to, administered by, and under the control of Respondent on or about February 25, 2009.*

ANSWER: Bug Bam Products, LLC denies that website sales on bugbam.com were under the control of or administered by Bug Bam Products, LLC during the period alleged.

26. *The website www.bugbam.com offered for sale the product "Bug Bam Insect Repelling Wristband" on or about February 25, 2009.*

ANSWER: Bug Bam Products, LLC denies it "offered for sale" the product in question.

27. *On or about February 25, 2009, Flash Sales was acting as the sales distributor for the Bug Bam product "Bug Bam Insect Repelling Wristband."*

ANSWER: Bug Bam Products, LLC admits the allegation in Paragraph 27.

28. *Flash Sales sent the product "Bug Bam Insect Repelling Wristband" via mail to Mr. Carpenter after the purchase of the item on the bugbam.com website on or about February 25, 2009.*

ANSWER: Paragraph 28 states a conclusion of fact for which Bug Bam lacks sufficient knowledge to admit or deny and therefore denies those facts Bug Bam Products, LLC notes that it does not represent or speak for Flash Sales, Inc.

29. *As a result, on or about February 25, 2009, Respondents jointly distributed or sold "Bug Bam Insect Repelling Wristband."*

ANSWER: Bug Bam Products, LLC denies the allegations of Paragraph 29.

30. *Respondents' sale or distribution of "Bug Bam Insect Repelling Wristband," an unregistered pesticide, constitutes a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).*

ANSWER: Paragraph 30 states a legal conclusion to which no response is required.

COUNT 2

31. *Paragraphs 1 through 22 are realleged and incorporated herein by reference.*

ANSWER: Answers to Paragraphs 1 through 22 are hereby incorporated by reference as if the same were set forth herein in full.

32. *On or about February 25, 2009, and employee of EPA identified as Frank Carpenter, accessed the website www.bugbam.com where he purchased the product "Bug Bam for Kids Insect Repelling Wristband."*

ANSWER: Bug Bam Products, LLC lacks sufficient knowledge of the allegations in Paragraph 32 and therefore denies those allegations.

33. *The website bugbam.com was registered to, administered by, and under the control of Respondent on or about February 25, 2009.*

ANSWER: Bug Bam Products, LLC denies that website sales on bugbam.com were under the control of or administered by Bug Bam Products, LLC during the period alleged.

34. *The website www.bugbam.com offered for sale the product "Bug Bam for Kids Insect Repelling Wristband" on or about February 25, 2009.*

ANSWER: Bug Bam Products, LLC denies it "offered for sale" the product in question.

35. *On or about February 25, 2009, Flash Sales was acting as the sales distributor for the Bug Bam product "Bug Bam for Kids Insect Repelling Wristband."*

ANSWER: Bug Bam Products, LLC admits the allegation of Paragraph 35.

36. *Flash Sales sent the product "Bug Bam for Kids Insect Repelling Wristband" via mail to Mr. Carpenter after the purchase of the item on the bugbam.com website on or about February 25, 2009.*

ANSWER: Paragraph 36 states a conclusion of fact for which Bug Bam lacks sufficient knowledge to admit or deny and therefore denies those facts. Bug Bam Products, LLC notes that it does not represent or speak for Flash Sales, Inc.

37. *As a result, on or about February 25, 2009, Respondents jointly distributed or sold "Bug Bam for Kids Insect Repelling Wristband."*

ANSWER: Bug Bam Products, LLC denies the allegations of Paragraph 37.

38. *Respondents' sale or distribution of "Bug Bam for Kids Insect Repelling Wristband," an unregistered pesticide, constitutes a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).*

ANSWER: Paragraph 38 states a legal conclusion to which no response is required.

COUNT 3

39. *Paragraphs 1 through 22 are realleged and incorporated herein by reference.*

ANSWER: Answers to Paragraphs 1 through 22 are hereby incorporated by reference as if the same were set forth herein in full.

40. *On or about February 25, 2009, and employee of EPA identified as Frank Carpenter, accessed the website www.bugbam.com where he purchased the product "Bug Bam Insect Repelling Grid."*

ANSWER: Bug Bam Products, LLC lacks sufficient knowledge of the allegations in Paragraph 40 and therefore denies those allegations.

41. *The website bugbam.com was registered to, administered by, and under the control of Respondent on or about February 25, 2009.*

ANSWER: Bug Bam Products, LLC denies that website sales on bugbam.com were under the control of or administered by Bug Bam Products, LLC during the period alleged.

42. *The website www.bugbam.com offered for sale the product "Bug Bam Insect Repelling Grid" on or about February 25, 2009.*

ANSWER: Bug Bam Products, LLC denies it "offered for sale" the product in question.

43. *On or about February 25, 2009, Flash Sales was acting as the sales distributor for the Bug Bam product "Bug Bam Insect Repelling Grid."*

ANSWER: Bug Bam Products, LLC admits the allegation of Paragraph 43.

44. *Flash Sales sent the product "Bug Bam Insect Repelling Grid" via mail to Mr. Carpenter after the purchase of the item on the bugbam.com website on or about February 25, 2009.*

ANSWER: Paragraph 44 states a conclusion of fact for which Bug Bam lacks sufficient knowledge to admit or deny and therefore denies those facts. Bug Bam Products, LLC notes that it does not represent nor speak for Flash Sales, Inc.

45. *As a result, on or about February 25, 2009, Respondents jointly distributed or sold "Bug Bam Insect Repelling Wristband."*

ANSWER: Bug Bam Products, LLC denies the allegations of Paragraph 45.

46. *As a result, on or about February 25, 2009, Respondents distributed or sold "Bug Bam Insect Repelling Grid."*

ANSWER: The allegations in Paragraph 46 are repeated from Paragraph 45. Bug Bam reiterates its Answer to Paragraph 45.

47. *Respondents' sale or distribution of "Bug Bam Insect Repelling Grid," an unregistered pesticide, constitutes a violation of Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A).*

ANSWER: Paragraph 47 states a legal conclusion to which no response is required.

PROPOSED CIVIL PENALTY

Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the assessment of a civil administrative penalty of up to \$7,500 for each violation of FIFRA occurring on or after January 12, 2009. For purposes of determining the amount of the civil penalty to be assessed, FIFRA Section 14(a)(4) requires EPA to consider the size of Respondent's business, the effect on Respondent's ability to continue in business and the gravity of the violations alleged. Based on the violations alleged in this Complaint, and after consideration of the statutory factors enumerated above, EPA proposes to assess the following civil penalty pursuant to FIFRA Section 14(a) and the FIFRA Enforcement Response Policy dated July 2, 1990 (a copy of which is enclosed with this Complaint), which provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above:

<i>Count 1 (Sale and/or distribution of an unregistered pesticide, violating Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A))</i>	<i>\$5,099</i>
<i>Count 2 (Sale and/or distribution of an unregistered pesticide, violating Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A))</i>	<i>\$5,099</i>
<i>Count 3 (Sale and/or distribution of an unregistered pesticide, violating Section 12(a)(1)(A) of FIFRA, 7 U.S.C. § 136j(a)(1)(A))</i>	<i>\$5,099</i>
<i>TOTAL (after rounding to nearest \$100)</i>	<i>\$15,300</i>

ANSWER: This unnumbered Paragraph is comprised solely of unsupported conclusions and is denied in full.

AFFIRMATIVE DEFENSES

Bug Bam Products, LLC states the following affirmative defenses, and expressly reserves the right to amend this Answer to raise additional defenses as may arise during the course of discovery and information exchange in this matter:

FIRST AFFIRMATIVE DEFENSE

Bug Bam Products, LLC at all times acted reasonably and in good faith, based on all relevant facts and circumstances it knew at the time.

SECOND AFFIRMATIVE DEFENSE

Complainant has failed to demonstrate a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Complainant has no right to relief. 40 C.F.R. §§ 22.4(c)(7), 22.20(a).

REQUEST FOR RELIEF

Because EPA has failed to establish a claim for which relief can be granted, Bug Bam Products, LLC respectfully motions, in accordance with 40 C.F.R. § 22.15(c), that all charges against it be dismissed.

In the alterative, because Bug Bam Products, LLC has acted in good faith; has never before been subject to an enforcement action; and has not distributed or sold a product that is likely to endanger human health or the environment, Bug Bam Products, LLC respectfully

motions, in accordance with 40 C.F.R. § 22.15(c), that EPA issue a NOW based upon the dictates of the FIFRA ERP.

Respectfully submitted,

Date: February 23, 2010

A handwritten signature in black ink, appearing to read 'Martha E. Marrapese', written over a horizontal line.

Martha E. Marrapese

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ATTORNEY FOR RESPONDENT,
Martha E. Marrapese

CERTIFICATE OF SERVICE

I, Martha E. Marrapese, hereby certify that on February 23, 2010, I sent the original and one copy of the foregoing Bug Bam Products, LLC's Answer to US EPA's First Amended Complaint and Notice of Opportunity for Hearing via Federal Express to:

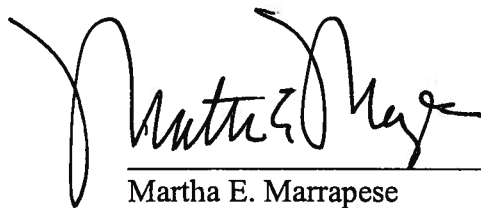
1. Mr. Steven Armsey
Acting Regional Hearing Clerk
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (ORC-1)
San Francisco, CA 94105

and one copy of the foregoing Answer via hand delivery to:

1. Honorable Barbara A. Gunning
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Franklin Court, Suite 350
1099 14th St. NW
Washington, DC 20005

and one copy via Federal Express to:

3. Mr. Ivan Lieben
Assistant Regional Counsel (ORC-3)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Martha E. Marrapese